

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 19TH APRIL 2007 / 29TH CHAITHRA 1929

Bail Appl.No. 2513 of 2007()

CRMP.1042/2007 of J.M.F.C.,CHITTUR

PETITIONER/ACCUSED.

HARIDAS P.NAIR, AGED 33 YEARS,
S/O.PRABHAKARAN NAIR, MANGALATHU HOUSE,
THURITHISSERI, MEKKADU P.O.,
NEDUMBASSERY.

BY ADVS. M/S.K.RAMAKUMAR, N.NAGARESH
AND K.R.RAJKUMAR

RESPONDENTS: STATE & COMPLAINANT.

-
1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI.
 2. THE ASST. SUB INSPECTOR OF POLICE,
CHITTUR, PALAKKAD.

DIRECTOR GENERAL OF PROSECUTIONS SRI.P.G.THAMBI
BY PUBLIC PROSECUTOR SMT. LAKSHMI RANI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
19/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.T. SANKARAN, J.

BAIL APPL. NO. 2513 OF 2007

Dated this the 19th day of April, 2007

O R D E R

The petitioner, an advocate practicing at Ernakulam, has filed this application for bail under Section 439 of the Code of Criminal Procedure. The petitioner was arrested on 13.4.2007 and he was ordered to be detained in judicial custody. The offences alleged against the petitioner are under Section 224, 225(ii Part) and 120-B(1) read with Section 34 of the Indian Penal Code.

2. The petitioner appeared for the third accused in Crime No.3 of 2007 of Chittur Excise Range. The said accused surrendered before the Court of the Judicial Magistrate of the First Class, Chittur and sought bail. He had moved a bail application before this Court and a direction was issued by this Court to surrender before the Magistrate's Court. CrI.M.P.No.1016 of 2007 was filed by the said third accused in Crime No.3 of 2007 for bail. The learned

Magistrate rejected the application for bail and remanded to judicial custody the third accused in Crime No.3 of 2007 till 24.4.2007. It is stated in the order passed by the learned Magistrate, produced as Annexure A in this case, that the said order was passed at 3.45 p.m. and the sitting was over thereafter. It is stated that the Police reported to the learned Magistrate that the third accused in Crime No.3 of 2007 escaped from custody. A statement written by the Head Constable, Chittur Police Station was submitted to the learned Magistrate, wherein it was stated that the petitioner herein (hereinafter referred to as 'the advocate') was involved in the escape of the third accused in Crime No.3 of 2007. The statement given by the Head Constable was forwarded to the Station House Officer, Chittur under Section 156(3) of the Code of Criminal Procedure and Crime No.84 of 2007 was registered for offences under Sections 224, 225(ii Part) and 120B(1) read with Section 34 of the Indian Penal Code. It would appear that the advocate was shown as the second accused. The third accused in Crime No.3 of 2007 was

arraigned as the first accused. The learned counsel for the petitioner submits that the other accused are the persons who stood as sureties for the third accused in Crime No.3 of 2007.

3. It is stated that the advocate was produced before the learned Magistrate at 11.50 p.m. at night on 13.4.2007, when he was remanded to judicial custody. It is further stated that immediately an application for bail was moved at the residence of the learned Magistrate, but the application was posted for hearing to 16.4.2007. On 16.4.2007, the bail application was heard and by the order dated 17.4.2007, the application was rejected. It is also stated in the present bail application that the petitioner herein moved an application for bail before the Court of Session, Palakkad on 18.4.2007, which was adjourned to 19.4.2007 and then to 20.4.2007. This bail application is moved in these facts and circumstances.

4. In Annexure-A order, the learned Magistrate

has made certain observations which was not necessary at all for the disposal of the application. It is to be noted, as submitted by the learned counsel for the petitioner, that no case is registered against the police constable or police constables who were in charge of the custody of the third accused in Crime No.3 of 2007 in connection with his escape from judicial custody. The learned Magistrate has stated in Annexure-A order, the version of the Police that the third accused escaped as suggested by the advocate. It is also stated that the third accused was contacted by the police over the mobile phone of the advocate and talked to the third accused as if the advocate was calling, when the third accused indicated that it was at the instance of the advocate that he had escaped. The learned Magistrate also states that the third accused in Crime No.3 of 2007 would not have dared to run away unless he had got information regarding the vehicle being arranged for his escape. Several other observations are made in the order passed by the learned Magistrate which are quite irrelevant for the

consideration of the bail application filed by the petitioner herein.

4. Learned counsel for the petitioner submits that the learned Magistrate has no jurisdiction to deal with the case as he would be a competent witness in the case against the petitioner. The counsel submits that the learned Magistrate was not at all justified in dealing with the case and in rejecting the application for bail.

5. Learned Director General of Prosecution appeared in the case and submitted that the State does not oppose the application for bail and that in the facts and circumstances of the case, the petitioner is to be released forthwith. It is interesting to note that no case has been registered against the Police Constables who are primarily answerable for the escape of the third accused in Crime No.3 of 2007. The only material available for the learned Magistrate was the statement given by the police, which statement,

according to the learned counsel for the petitioner, would naturally be interested, since they are involved or they are answerable for the escape of the third accused. The learned counsel also pointed out that the Advocate's robes of the petitioner have been taken as material objects in the case. Normally, it was not at all necessary to take the robes of the advocate as material objects in the case. The proof or otherwise of the allegations in the case does not rest on the availability of the robes of the petitioner advocate. The offence would not be proved by the presence of the robes in the custody of the police nor would the absence of the robes as material objects disprove the allegation. These acts on the part of the police are to be taken note of along with the inaction on their part in taking any action on the erring police constables. Normally, an advocate who appears for an accused would not dare to be a party to the escape of the accused. The advocate is an officer of the court. Unless there are clinching circumstances to show that the petitioner advocate was involved in the alleged offence, the

learned Magistrate was not justified in refusing bail to the petitioner.

6. In the facts and circumstances of the case, and particularly taking note of the submission made by the learned Director General of Prosecutions, I am of the view that the petitioner is liable to be released forthwith from jail. The Superintendent of Sub Jail, Alathur shall release the petitioner forthwith on production of a copy of this order, without insisting for any formal order from the learned Magistrate. The petitioner shall execute a bond before the Superintendent of Sub Jail before his release.

In the interests of justice, it is also necessary to direct the Chief Judicial Magistrate, Palakkad to take steps to transfer the files in respect of Crime No.84 of 2007 from the Court of the Judicial Magistrate of the First Class, Chittur to any other court as the Chief Judicial Magistrate may deem fit and proper in the facts and circumstances of the case. On release

B.A. NO. 2513 OF 2007

:: 8 ::

of the petitioner from jail, he shall appear before the Chief Judicial Magistrate, Palakkad and execute a bond for Rs.20,000/- with two solvent sureties for the like amount, within a week from the date of his release.

Handover a copy of this order today itself.

(K. T. SANKARAN)
Judge

ahz/